IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

PEDRO TLAPA CASTILLO, *Plaintiff*, v. DAVID SNYDERS, Stephenson County Sheriff, *Defendant*. --- STATE OF ILLINOIS, *Intervenor*.	)	Case No. 19-CV-50311 Judge Thomas M. Durkin Magistrate Judge Lisa A. Jensen

STATE OF ILLINOIS'S RESPONSE TO THE DEFENDANT'S CHALLENGE TO THE CONSTITUTIONALITY OF THE ILLINOIS TRUST ACT

INTRODUCTION

Intervenor, the State of Illinois ("State"), submits this brief in support of Plaintiff Pedro Tlapa Castillo's motion to remand and in opposition to the challenge by Defendant, Stephenson County Sheriff David Snyders ("Sheriff"), to the constitutionality of the Illinois TRUST Act, 5 ILCS 805/1 *et seq*. The Sheriff's effort to remove this case rests on a faulty foundation: that he could detain Plaintiff at the request of federal agents because he believes federal immigration authority overrides Illinois law governing the conduct of the State's own officers. A 2017 law enacted by the Illinois Legislature, the TRUST Act, explicitly prohibited the Sheriff from complying with a civil immigration detainer. But the Sheriff did so anyway under the incorrect notion that he could ignore state law to participate in federal immigration enforcement. Defendant now seeks access to this Court to attempt to invalidate the Illinois law he violated.

Defendant's challenge to the TRUST Act does not present the "colorable federal defense" necessary for removal to be proper. *See* 28 U.S.C. § 1442(a)(1); *Mesa v. California*, 489 U.S. 121, 129 (1989). Defendant's defense that federal authority over immigration preempts the TRUST Act ignores critical components of federal law that recognize and preserve the State's sovereign right to decide whether to use its resources to support federal immigration enforcement. The TRUST Act reflects the Illinois Legislature's decision to decline to provide such assistance. The TRUST Act does not conflict with federal law and is not preempted by it. Because Defendant has no colorable federal defense, the State concurs with Plaintiff that Defendant's removal fails.

BACKGROUND

The Illinois TRUST Act took effect on August 28, 2017. The TRUST Act expressly prohibits state and local law enforcement officials in Illinois from detaining or "continu[ing] to detain any individual solely on the basis of any immigration detainer or non-judicial immigration

warrant." 5 ILCS 805/15(a). The Act defines "immigration detainer" to mean "a document issued by an immigration agent that is not approved or ordered by a judge and requests a law enforcement agency or law enforcement official to provide notice of release or maintain custody of a person." 5 ILCS 805/10. Despite the TRUST Act's prohibition against detaining individuals solely on the basis of an immigration detainer, the Sheriff concedes that he worked "hand-in-hand" with federal officers to detain Plaintiff based on a "detainer from a Federal Immigration Officer from the Department of Homeland Security." *See* ECF No. 1, ¶¶ 5–7.

On October 23, 2019, Plaintiff filed this action in the Circuit Court of Stephenson County, claiming, *inter alia*, that the Sheriff violated the TRUST Act. On November 22, 2019, the Sheriff removed to this Court, claiming federal officer jurisdiction under 28 U.S.C. § 1442(a)(1). The Sheriff alleged that the TRUST Act is preempted because it conflicts with federal immigration law. ECF No. 1, ¶ 7. The Sheriff then moved to dismiss Plaintiff's TRUST Act claims, asserting that the Act is both conflict and field preempted by federal immigration law. ECF No. 11-1 at 1, 7–12. The Sheriff then notified the State under Federal Rule of Civil Procedure 5.1 that he was challenging the constitutionality of the TRUST Act. ECF No. 16. On January 7, 2020, the State moved to intervene to defend the constitutionality of the TRUST Act, ECF No. 27, which the Court allowed. ECF No. 29. The Sheriff withdrew his motion to dismiss without prejudice pending resolution of Plaintiff's motion to remand. *Id.* The Sheriff's counsel affirmed that the notice of removal and withdrawn motion to dismiss contained the scope of his arguments against the constitutionality of the TRUST Act.

LEGAL STANDARD

To remain in federal court, the Sheriff must show that he (1) is a "person," (2) "acting under" federal officers, (3) has been sued "for or relating to any act under color of" federal

authority, and (4) has a colorable federal defense. *Ruppel v. CBS Corp.*, 701 F.3d 1176, 1180–81 (7th Cir. 2012) (quoting 28 U.S.C. § 1442(a)). For removal to be proper, the Sheriff bears the burden of showing that his preemption challenge to the TRUST Act is a "colorable federal defense." 28 U.S.C. § 1442(a)(1); *Ruppel*, 701 F.3d at 1182. To clear this hurdle, the Sheriff's preemption theory must be "plausible." *Ruppel*, 701 F.3d at 1182; *see also Alsup v. 3-Day Blinds, Inc.*, 435 F. Supp. 2d 838, 853 (S.D. Ill. 2006) (remanding where defendant's preemption defense was not plausible).

ARGUMENT

I. None of the Sheriff's preemption arguments present a plausible federal defense.

Despite the TRUST Act's prohibition to the contrary, *see* 5 ILCS 805/15(a), the Sheriff acknowledges that he continued to detain Plaintiff solely on the basis of a federal immigration detainer. *See* ECF No. 1, ¶ 5. Recognizing that the detention violated state law, the Sheriff contends the TRUST Act is preempted by federal law. *Id.* ¶ 7. The Sheriff's arguments do not have any basis in law, do not present a plausible federal defense, and do not provide grounds for removal.

The Sheriff's arguments invoke both a narrow form of preemption, known as conflict preemption, and the much broader concept of field preemption. ECF No. 11-1 at 7–12. With regard to conflict preemption, the Sheriff, relying primarily on a guidance memorandum from the Department of Homeland Security ("DHS"), *id.* at 8–9, contends that the TRUST Act presents a "direct obstacle to the objective of cooperation between local and federal agencies" allegedly codified at 8 U.S.C. § 1357(g)(10). *Id.* at 8. The Sheriff's argument mischaracterizes federal law, which does not mandate cooperation by state or local officials in federal immigration enforcement. To the contrary, federal law, including the statute the Sheriff cites, preserves the State's ability to decline to participate in immigration enforcement. The TRUST Act merely exercises the State's sovereign prerogative to decide how its state and local law enforcement resources will be used.

The Sheriff's field preemption argument is also not a plausible federal defense. The burden for establishing field presumption is heavy, and the Sheriff has not come close to carrying it. The Sheriff's field preemption argument is incompatible with federal case law recognizing that states retain the power to determine whether their officials will comply with federal immigration detainers, which are requests, not mandates.

A. Conflict preemption is not a colorable defense in this case.

The Sheriff argues that the TRUST Act is invalid because of conflict preemption, ECF No. 11-1 at 8–11, but there is a strong presumption against invalidating a state law on this basis. *See Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996) ("In all pre-emption cases … we start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.") (quotations omitted). This presumption against conflict preemption exists because the "preemption of state laws represents 'a serious intrusion into state sovereignty.'" *Va. Uranium, Inc. v. Warren*, 139 S. Ct. 1894, 1904 (2019) (quoting *Lohr*, 518 U.S. at 488).

Conflict preemption "arises when state law conflicts with federal law to the extent that 'compliance with both federal and state regulations is a physical impossibility,' or the state law 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" *Planned Parenthood of Ind., Inc. v. Comm'r of Ind. State Dep't of Health*, 699 F.3d 962, 984 (7th Cir. 2012) (citation omitted). In deference to state sovereignty, "a high threshold must be met if a state law is to be preempted for conflicting with the purposes of a federal Act." *Chamber of Commerce of U.S. v. Whiting*, 563 U.S. 582, 607 (2011) (finding no conflict preemption for an Arizona law allowing revocation of employers' business licenses for employing undocumented immigrants) (citation omitted). Thus, "when the text of a preemption clause is susceptible of more than one plausible reading, courts ordinarily 'accept the reading that disfavors

pre-emption.'" *Patriotic Veterans, Inc. v. Indiana*, 736 F.3d 1041, 1046 (7th Cir. 2013) (quoting *Altria Grp., Inc. v. Good*, 555 U.S. 70, 77 (2008)).

The Sheriff attacks the TRUST Act as a form of obstacle preemption. ECF No. 11-1 at 8. Obstacle preemption occurs when a state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Arizona v. United States*, 567 U.S. 387, 399 (2012) (citations omitted). "What is a sufficient obstacle is a matter of judgment, to be informed by examining the federal statute as a whole and identifying its purpose and intended effects." *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 373 (2000). But mere tension or inconvenience is insufficient to frustrate congressional purpose. "[T]he presumption against preemption … dictates that a law must do 'major damage' to clear and substantial federal interests before the Supremacy Clause will demand that state law surrenders to federal regulation." *Patriotic Veterans*, 736 F.3d at 1050 (quoting *Hillman v. Maretta*, 569 U.S. 483, 491 (2013)).

In light of the presumption against preemption, the text of the relevant federal immigration statute, and federal case law rejecting the Sheriff's premise, the Sheriff has no colorable defense based on conflict preemption, as shown below.

1. The TRUST Act is not an obstacle to Section 1357(g)(10) of the INA.

The Sheriff characterizes the TRUST Act as an obstacle to 8 U.S.C. § 1357(g)(10), a provision in the Immigration and Naturalization Act ("INA"). ECF No. 11-1 at 8–9. It is not. Section 1357(g)(10) is part of a broader statutory scheme that expressly recognizes that the states retain the power to decide whether to assist in federal immigration enforcement efforts. The TRUST Act simply exercises Illinois's authority to decline to provide this assistance.

Section 1357(g)(10) is the last of ten subparts composing a section of the INA that lays out a process and requirements for a state or local law enforcement agency to enter a voluntary agreement with the federal government to allow the agency's officers to engage in federal

immigration enforcement. *See* 8 U.S.C. § 1357(g)(1)-(10). Section 1357(g) as a whole makes clear, however, that the decision whether to enter such an agreement is within the state or locality's discretion. Section 1357(g)(1) specifies that the delegation of federal authority under such an agreement must be "consistent with State and local law." *See Wyeth v. Levine*, 555 U.S. 555, 575 (2009) (stating that the "case for federal pre-emption is particularly weak where Congress has indicated its awareness of the operation of state law in a field of federal interest, and has nonetheless decided to stand by both concepts and to tolerate whatever tension there [is] between them") (quoting *Bonito Boats, Inc. v. Thunder Craft Boats, Inc.*, 489 U.S. 141, 166–67 (1989)). In other words, if using a particular state's law enforcement officers to enforce federal immigration law would violate that state's law, then Section 1357(g)(1) would preclude the federal government from entering an agreement with that state. *Cf.* 5 ILCS 805/5 (stating that Illinois law "does not currently grant State or local law enforcement the authority to enforce federal civil immigration laws"). Far from preempting state authority, Section 1357(g)(1) expressly preserves it.

Similarly, Section 1357(g)(9) affirms that states and localities are not required to enter any agreement with the federal government to enforce federal immigration law: "Nothing in this subsection shall be construed to require any State or political subdivision of a State to enter into an agreement with the [United States] Attorney General under this subsection." 8 U.S.C. § 1357(g)(9). Instead of compelling participation in federal immigration enforcement, Section 1357(g)(9) recognizes the right of states and their subdivisions to decline such participation.

Section 1357(g)(10), which the Sheriff cites, ECF No. 11-1 at 8–10, does not remove states' ability to decline participation in federal immigration enforcement. It states in relevant part:

> Nothing in this subsection shall be construed to require an agreement under this subsection in order for any officer or employee of a State or political subdivision of a State—(A) to communicate with the Attorney General regarding the immigration status of any individual ... or (B) otherwise to cooperate with the

> Attorney General in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States.

8 U.S.C. § 1357(g)(10). The Sheriff touts this subpart as codifying an "objective of cooperation between local and federal agencies" in the enforcement of federal immigration law that the TRUST Act allegedly thwarts. ECF No. 11-1 at 8. The Sheriff overstates the sweep of Section 1357(g)(10).

Read in the context of a subsection setting requirements for agreements to delegate federal authority to state officials to enforce federal immigration law, Section 1357(g)(10) does nothing more than clarify that such agreements are not a precondition for a state or local law enforcement agency to assist federal immigration authorities if it wishes to do so. Put differently, Section 1357(g)(10) preserves the possibility of cooperation in the absence of the formal agreement contemplated by the rest of the subsection (presuming state law authorizes such assistance). Section 1357(g)(10) does not, however, strip states and localities of their right to refuse to dedicate their own resources to support federal immigration efforts.

Accepting the Sheriff's reading of subpart (g)(10) would vitiate the express reservations of state and local authority elsewhere in Section 1357(g). It defies logic that Congress would provide in subpart (g)(9) that states are not required to agree to participate in federal immigration enforcement only to then, in the very next subpart, adopt a "cooperation" provision that invalidates a state's attempt to decline such participation. *See Hibbs v. Winn*, 542 U.S. 88, 101 (2004) (requiring that a statute be interpreted "so that no part will be inoperative or superfluous").

The Sheriff's reading of subpart (g)(10) also ignores the requirement in subpart (g)(1) that state participation in federal immigration enforcement be consistent with state and local law. *See Esparza v. Nobles Cty.*, No. A18-2011, 2019 WL 4594512, at *10 (Minn. Ct. App. Sept. 23, 2019) ("If we were to conclude that section 1357(g)(10) authorizes state and local officers to seize and detain removable aliens *irrespective of state law*, then we would render meaningless the federal

requirement that 287(g) agreements be consistent with state and local law."); *People ex rel. Wells v. DeMarco*, 168 A.D.3d 31, 52 (N.Y. App. Div. 2018) (rejecting "the view that the Congress, through its provision for voluntary informal cooperation, thereby authorized state and local law enforcement officers to undertake actions not allowed them by state law"). Furthermore, the Sheriff's divination of a sweeping "objective" of "cooperation" in subpart (g)(10), ECF No. 11-1 at 8, that invalidates the TRUST Act is the type of generalization that courts have found insufficient to overcome the presumption against preemption. *Wis. Educ. Ass'n Ins. Tr. v. Iowa State Bd. of Pub. Instruction*, 804 F.2d 1059, 1063 (8th Cir. 1986) (holding that "generalizations do not provide 'clear and manifest' evidence to overcome the presumption that Congress did not intend to preempt an area of traditional state regulation") (citation omitted).

Section 1357(g)(10) does not preempt the TRUST Act. To the contrary, Section 1357(g) as a whole recognizes that states retain the sovereign right to decide whether to use their own resources to engage in federal immigration enforcement.[1]

2. The TRUST Act accords with the State's long-recognized prerogative to decide how best to direct its law enforcement officers.

The Sheriff objects that the TRUST Act commands him to "be unresponsive to federal control or direction in immigration enforcement." ECF No. 11-1 at 9. Yet courts have long accepted the notion that a state is permitted to command the activities of its own law enforcement

[1] Defendant points to two cases purportedly finding "[s]imilar conflicts" between the INA and local laws, ECF No. 11-1 at 9–10, but those cases are no longer good law. Defendant's cited cases, *City of Chicago v. Sessions* and *City of New York v. United States*, predate *Murphy v. NCAA*, 138 S. Ct. 1461 (2018), which held that federal prohibitions that tell states *not* to do something are just as invalid as direct commands to states under the Tenth Amendment and anti-commandeering principles. *Id.* at 1482 (holding that whether a federal law commands state action or prohibits it, "[t]he basic principle that Congress cannot issue direct orders to state legislatures" still governs). In a subsequent opinion, the court in *Sessions* recognized this change and held Section 1373 to be unconstitutional. *City of Chicago v. Sessions*, 321 F. Supp. 3d 855, 873 (N.D. Ill. 2018) (*Sessions I*) (holding that Section 1373 constitutes unconstitutional commandeering after *Murphy*). The same opinion noted "that *Murphy*'s holding deprives *City of New York* of its central support." *Id.* Other courts have also recognized that the holding of *City of New York* is no longer valid under *Murphy*. *See, e.g.*, *New York v. Dep't of Justice*, 343 F. Supp. 3d 213, 234 (S.D.N.Y. 2018) ("It is clear that *City of New York* cannot survive the Supreme Court's decision in *Murphy*.").

officers without federal interference. *See United States v. California*, 921 F.3d 865, 887 n.11 (9th Cir. 2019) ("A state's ability to regulate its internal law enforcement activities is a quintessential police power.") (citation omitted); *Sessions I*, 321 F. Supp. 3d at 869 ("A state's ability to control its officers and employees lies at the heart of state sovereignty."). *See also Printz v. United States*, 521 U.S. 898, 928 (1997) (noting incompatibility with states' sovereignty for "their officers [to] be 'dragooned' … into administering federal law"); *New York v. United States*, 505 U.S. 144, 176–77 (1992) (states must have a "critical alternative" to "decline to administer [a] federal program").

This deference to a state's ability to command its own officers extends to the area of immigration. Both this Court and the Seventh Circuit have repeatedly rejected the notion that "[f]ederal immigration efforts could be frustrated if localities may prohibit their employees from [cooperating] with federal authorities." *Sessions I*, 321 F. Supp. 3d at 871; *City of Chicago v. Sessions*, 888 F.3d 272, 282 (7th Cir. 2018), *vacated in part on other grounds*, No. 17-2991, 2018 WL 42688174 (7th Cir. June 4, 2018) (*Sessions II*). *See also City of Chicago v. Barr*, 405 F. Supp. 3d 748, 762–63 (N.D. Ill. 2019). Courts across the country have agreed, rejecting the argument that a state's refusal to permit its officers to participate in federal immigration enforcement amounts to interference with federal efforts. *See, e.g.*, *Oregon v. Trump*, 406 F. Supp. 3d 940, 972 (D. Or. 2019) ("Although a state or locality's decision to refrain from assisting in federal enforcement may frustrate the efforts of immigration authorities, standing aside does not equate to standing in the way.") (citation and quotations omitted); *City of San Francisco v. Sessions*, 349 F. Supp. 3d 924, 950 (N.D. Cal. 2018) (invalidating a federal statute that "applies regardless of any State's attempt to regulate immigration, and in fact restricts States in unrelated criminal justice contexts completely outside the scope of the INA").

These cases and several others invalidated 8 U.S.C. § 1373, a statute prohibiting states

from preventing their officers from communicating immigration information to the federal government. The federal government attempted to force compliance with Section 1373 through a condition on federal funding for law enforcement, an attempt that has been unanimously rejected throughout the country. *City of Providence v. Barr*, No. 18-cv-437, 2019 WL 5991039, at *2 (D.R.I. Nov. 14, 2019) (collecting cases). In Illinois, the federal government tried to impose this condition on Chicago despite an ordinance that, like the TRUST Act, prohibited local cooperation with federal immigration enforcement efforts. *Sessions II*, 888 F.3d at 279–80. Dismissing the notion that prohibitions against cooperation would "thwart federal law enforcement," the Seventh Circuit characterized the argument as a "red herring" because Chicago's prohibitions did not involve any "affirmative *interference* with federal law enforcement at all, nor … any interference whatsoever with federal immigration authorities." *Id*. at 282. Similarly, the TRUST Act does not require affirmative interference; it simply codifies a statewide "refusal … to aid in civil immigration enforcement." *Sessions I*, 321 F. Supp. 3d at 871.

This type of nonparticipation does not constitute obstacle preemption. As the Ninth Circuit explained in *United States v. California*, while "[f]ederal schemes are inevitably frustrated when states opt not to participate in federal programs," the "choice of a state to refrain from participation [in federal immigration enforcement] cannot be invalid under the doctrine of obstacle preemption where … it retains the right of refusal" under federal law. *California*, 921 F.3d at 890. To do so would "imply that a state's otherwise lawful decision *not* to assist federal authorities is made unlawful when it is codified as state law." *Id*.

3. The DHS memorandum and policy provide no basis to invalidate the TRUST Act.

Other than Section 1357(g)(10), the only other specific federal sources the Sheriff relies upon as preempting the TRUST Act are a DHS memorandum and policy. ECF No. 11-1 at 8–9,

11–12. But the Supreme Court has held that any "[e]vidence of pre-emptive purpose, whether express or implied, must … be sought in the text and structure of the statute at issue." *Va. Uranium*, 139 S. Ct. at 1907 (citations and quotations omitted). The DHS memorandum and policy are not part of the INA and cannot preempt the TRUST Act. *See id.* (rejecting the "elevat[ion] [of] abstract and unenacted legislative desires above state law").

B. Field preemption is not a colorable defense.

The Sheriff asserts that the TRUST Act's prohibition on cooperation with federal detainer requests is preempted because federal law has occupied the field of "immigration generally, and detainers specifically." ECF No. 11-1 at 11. Field preemption occurs "when the federal regulatory scheme is so pervasive or the federal interest so dominant that it may be inferred that Congress intended to occupy the entire legislative field." *Patriotic Veterans*, 736 F.3d at 1049 (citations omitted). Field preemption should not be inferred unless the Sheriff shows that a "complete ouster of state power … was the clear and manifest purpose of Congress[.]" *DeCanas v. Bica*, 424 U.S. 351, 357 (1976) (citations and quotations omitted), *superseded in part on other grounds by statute*. The Sheriff cannot make this showing.

1. The TRUST Act does not regulate the field of immigration.

The Sheriff's field preemption argument mischaracterizes the TRUST Act as an immigration regulation, when it is instead a statute that opts out of immigration enforcement. This distinction is why the Sheriff's reliance on *Arizona*, 567 U.S. 387, is misplaced. ECF No. 1, ¶ 7.

Arizona found that field preemption required the striking down of a state statute that added "a state-law penalty for conduct proscribed by federal law," specifically, an alien's failure to "complete or carry an alien registration document … in violation of [the INA]." 567 U.S. at 400 (discussing Ariz. Rev. Stat. Ann. § 13-1509(A)). In other words, the state statute at issue in *Arizona* purported to redefine and expand the consequences of violating a federal immigration statute

governing alien registration. The Supreme Court concluded, however, that Congress "had occupied the field of alien registration," and that "[w]here Congress occupies an entire field, as it has in the field of alien registration, even complementary state regulation is impermissible." *Id.* at 401. By contrast, the purpose of the TRUST Act is to avoid involvement in the federal domain of immigration enforcement. Instead of injecting state law into the field of immigration enforcement, which is what the statute in *Arizona* did, the TRUST Act restricts state participation in federal immigration enforcement.[2]

Defendant's attempt to cast a nonparticipation statute like the TRUST Act as an immigration regulation violates the Supreme Court's instruction not to over-read state laws as immigration regulations. In *DeCanas*, which dealt with a state limitation on hiring undocumented immigrants, the Court cautioned that "the fact that aliens are the subject of a state statute does not render it a regulation of immigration, which is essentially a determination of who should or should not be admitted into the country, and the conditions under which a legal entrant may remain." 424 U.S. at 355. The Sheriff's characterization of the TRUST Act as an immigration regulation exemplifies the type of overreach the Supreme Court has disfavored. The Sheriff's reading of the TRUST Act as an immigration regulation undermines the presumption against preemption and should be rejected in favor of a reading that avoids preemption. *See Altria Grp.*, 555 U.S. at 77 (stating that courts should accept a plausible reading of a statute that avoids preemption).

[2] The Sheriff also cites a portion of the *Arizona* decision applying obstacle preemption analysis in support of his field preemption argument. ECF No. 11-1 at 11-12 (citing 567 U.S. at 408-09). In addition to improperly conflating different types of preemption, the Sheriff's argument overlooks the critical distinction between declining participation in federal immigration enforcement and attempting state-level immigration enforcement. The *Arizona* majority held that a state statute that "attempt[ed] to provide state officers even greater authority to arrest aliens on the basis of possible removability than Congress has given to trained federal immigration officers" was an obstacle to federal law and therefore preempted. 567 U.S. at 408. In this case, the TRUST Act purposefully avoids state-level immigration enforcement and, in doing so, avoids the conflict with federal law that doomed the statute in *Arizona*.

In actuality, the TRUST Act regulates how the State chooses to use its law enforcement resources. This choice is entirely within the State's traditional sovereign domain. As the Seventh Circuit stated in *Sessions II*, "[t]he choice as to how to devote law enforcement resources—***including whether or not to use such resources to aid in federal immigration efforts***—[is] traditionally … left to state and local authorities." 888 F.3d at 282 (emphasis added). The Court should reject the Sheriff's characterization of the TRUST Act as an intrusion into the federal domain of immigration regulation.

2. The TRUST Act does not regulate the field of immigration detainers.

Federal regulation of immigration detainers issued by Immigration and Customs Enforcement ("ICE") to state and local law enforcement similarly does nothing to advance the Sheriff's field preemption theory. While the federal government controls the issuance and scope of ICE detainers, state and local law enforcement are free to decline to carry them out. It is the overwhelming consensus of the federal courts that immigration detainers are ***requests*** and "do not and cannot compel a state or local law enforcement agency to detain suspected aliens subject to removal." *Galarza v. Szalczyk*, 745 F.3d 634, 636, 640–41 (3d Cir. 2014) (citing opinions from the First, Second, Fourth, Fifth, and Sixth Circuits). Moreover, the "plain language of the detainer itself … self-identifies as a 'request[.]'" *Villars v. Kubiatowski*, 45 F. Supp. 3d 791, 802 (N.D. Ill. 2014) (finding that local police were not required to hold plaintiff based on immigration detainer).

In *City of El Cenizo v. Texas*, 890 F.3d 164 (5th Cir. 2018), the Fifth Circuit rejected a preemption challenge to a state law mandating local compliance with detainer requests. That case recognized the authority states and localities have over whether to use their resources to support federal immigration enforcement: "Federal law regulates *how* local entities may cooperate in immigration enforcement; SB4 specifies *whether* they cooperate." *Id*. at 177. Although the "field"

in that case might have been drawn more broadly, the Fifth Circuit cautioned that the "relevant field should be defined narrowly." *Id*. at 177–78. Here, as in *El Cenizo*, "[f]ederal law does not suggest the intent—let alone a 'clear and manifest' one—to prevent states from regulating *whether* their localities cooperate in immigration enforcement." *Id.* at 178 (citation omitted). Federal immigration law is not disturbed because the INA "does not require cooperation at all." *Id*. (citing 8 U.S.C. § 1357).

The Sheriff's argument that Congress has occupied the field of detainer regulation fundamentally misunderstands the nature of immigration detainers, which are requests, not mandates, to state and local officials. And because immigration detainers are, as a matter of federal law, requests, Illinois is free to decline those requests, as it has done through the TRUST Act.[3]

C. The federal government cannot compel the Sheriff to comply with immigration detainers.

The Sheriff's apparent defense—that a federal immigration detainer compelled him to violate state law, ECF No. 11-1 at 11; ECF No. 1, ¶ 5—is also incompatible with the Tenth Amendment. The Sheriff attempts to frame the immigration detainer he received as a directive; he labels it a document "notifying him to maintain custody of the plaintiff." ECF No. 1, ¶ 5. But any such order by federal authorities to local officials would constitute unconstitutional commandeering of local resources by the federal government—and would thus not be an order with which the Sheriff may lawfully comply.

The anti-commandeering doctrine flows from "a fundamental structural decision incorporated into the Constitution, *i.e.*, the decision to withhold from Congress the power to issue

[3] The fact that the immigration detainer the Sheriff received was a request, not a mandate, also means that he was not "acting under" federal officials for purposes of 28 U.S.C. § 1442(a)(1). *See Watson v. Philip Morris Co.*, 551 U.S. 142, 147 (2007) (explaining that "acting under" means subject to the "direction" or "control" of the federal government).

orders directly to the States." *Murphy*, 138 S. Ct. at 1475. To that end, the federal government may not "command the States' officers, or those of their political subdivisions, to administer or enforce a federal regulatory program." *Printz v. United States*, 521 U.S. 898, 935 (1997); *see also Murphy*, 138 S. Ct. at 1476 (federal government may not "issue direct orders to the governments of the States"). "[E]ven where Congress has the authority under the Constitution to pass laws requiring or prohibiting certain acts, it lacks the power directly to compel the States to require or prohibit those acts." *New York v. United States*, 505 U.S. 144, 166 (1992) (citations omitted).

The Sheriff's view that the immigration detainer he received mandated him "to maintain custody of the plaintiff" violates these basic principles. The federal government may not "impress into its service—and at no cost to itself—the police officers of the 50 States." *Printz*, 521 U.S. at 922. Even absent the TRUST Act's prohibition on the Sheriff's conduct, any such directive would be unlawful under *Murphy*, 138 S. Ct. at 1477 (noting that "the anticommandeering principle prevents Congress from shifting the costs of regulation to the States"), because it would seek to compel the use of state and local resources in federal law enforcement.

CONCLUSION

For these reasons, the Court should grant Plaintiff's motion to remand.

Date: February 3, 2020

Respectfully submitted,

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